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suggested in a federal case<sup>8</sup> that the directors as trustees have no such right and that they must act as ordinary trustees of creditors and therefore prefer creditors or pay claims in full at their peril. The case also suggests, notwithstanding they act under the statute, that the assistance of equity is always open to their protection. It would seem that a suit in equity by the director-trustees would be the safest and most satisfactory method of winding up the affairs of the company.

Under the code,<sup>9</sup> a receiver cannot be appointed to take the place of such director-trustees on the complaint of creditors or stockholders except on showing a failure on their part to perform their duties.<sup>10</sup> The court cannot, on its own motion, or on the application of a stranger, appoint such receiver.<sup>11</sup>

M. C. L.

**Corporations—Purchase by Corporation of Shares of Its Own Stock—Withdrawal of Capital Stock.**—It is generally stated that in California under Section 309 of the Civil Code, a corporation is not authorized to purchase shares of its own stock. Such a purchase would amount to a payment to the stockholder of part of the capital stock. In a recent case<sup>1</sup> the Supreme Court of this State was called upon to construe a contract which, it was claimed, fell under this provision. The contract provided that, "should the purchaser of said stock certificate . . . wish to sell the same, we will re-purchase it at par value . . . on ninety days' notice." The stockholder offered his stock to the corporation after giving the required notice, but the corporation refused to re-purchase according to the terms of the contract. The court held that the corporation was liable on the promise to re-purchase, and that such a transaction would not amount to a purchase by the corporation of its own stock in violation of the code section.<sup>2</sup>

The court cites an earlier case decided by the District Court of Appeal,<sup>3</sup> in support of the view. In that case, however, the return of the money paid was conditioned upon the satisfaction of the party paying, after an examination of the property of the corporation. The condition, therefore, clearly related to the nature of the property. In its decision, the court did not discuss the code section. The Supreme Court has held that a by-law assuming to give to any stockholder the

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<sup>8</sup> American Ice Co. v. Pocono Spring Water Co. (1908), 165 Fed. 714 see also Thompson on Corporations, Secs. 6604, 6605, 6611.

<sup>9</sup> Cal. Civil Code, Secs. 564, 565.

<sup>10</sup> See 7 supra.

<sup>11</sup> State Investment & Ins. Co. v. Superior Ct (1894), 101 Cal. 135, 147, 35 Pac. 549.

<sup>1</sup> Schulte v. Boulevard Gardens Land Co. (Jan. 9, 1913), 45 Cal. Dec. 65.

<sup>2</sup> Cal. Civil Code, Sec. 309.

<sup>3</sup> Dickinson v. Zubiato Mining Co. (1909), 11 Cal. App. 656, 106 Pac. 123.

right, on sixty days' notice, to withdraw from the corporation, and to receive upon surrender of his stock the amount paid therefor, was in violation of Section 309.<sup>4</sup> The court thought that to allow the stockholder to take advantage of the by-law would amount to a withdrawal of the capital stock. Wherein does the principal case differ? The agreement in the Schulte case was in the form of an agreement to re-purchase rather than a conditional sale. The corporation, in words, promises to re-purchase, and, it is submitted, the effect of that promise is to make it a distinct transaction. The re-purchase is not conditioned upon any term such as, "if the purchaser be not satisfied with his investment."<sup>5</sup> It imports rather that, when the shareholder is ready to sell, the corporation will purchase at par value.

The opinion of the court clearly excepts the case where the rights of creditors are involved. But is the code section not also designed for the protection of shareholders where such a contract would be for the benefit of a single stockholder and thereby reduce the assets on distribution? The court admits the shareholder's right to show fraud in such a transaction. If a few stockholders buy stock on such contracts, is it not a hardship on the others, and if all or nearly all the shareholders have such contracts, is the situation not the same as in the case above where the by-law gave the shareholders the right to get their money back? As between the parties to the bargain, it is undoubtedly fair to hold them to their promises, but did not the code section intend to look behind the entity for the protection of the body of stockholders?

M. C. L.

**Corporations—Right of Inspection of Corporations—Property by Stockholder.**—What appears to be a new development of the common law has been announced in a recent decision by the Supreme Court of the State of California.<sup>1</sup> Under the plain provisions of our Civil Code,<sup>2</sup> the court sustained the contention of the plaintiff, a stockholder in an Arizona mining corporation, for the right of inspection of the mining property.

The interesting point, however, arises in the discussion by the court of the general rights of inspection of stockholders. After discussing the common law right of inspection of corporate books, papers, and records, the court states that the "common law rule, in our opinion, extends to the corporate property as fully as to the books."

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<sup>4</sup> *Vercoutere v. Golden State L. Co.* (1897), 116 Cal. 410, 48 Pac. 375.

<sup>5</sup> *Ophir Mines Co. v. Brynteson* (1906), 143 Fed. 829.

<sup>1</sup> *Hobbs v. The Tom Reed etc. Co. et al.* (January 24, 1913), 45 Cal. Dec. 87.

<sup>2</sup> Civil Code of California, Sec. 589.